SETTLEMENT AGREEMENT

This Settlement Agreement is entered into as of the __th day of _____, 2008 (the "Effective Date") by and among: DAVID R. BRUZZONE; JOAN E. BRUZZONE; RUSSELL J. BRUZZONE, INC., a California corporation; BOLLINGER DEVELOPMENT, LLC, a Nevada limited liability company; and the ESTATE OF RUSSELL J. BRUZZONE (collectively "Petitioners" or "Bruzzone"), and the CITY OF LAFAYETTE, a municipal corporation ("City" or "Lafayette"). Collectively Petitioners and Lafayette may be referred to as the Parties.

RECITALS

A. Bruzzone is the owner of approximately 160 acres of real property located within the City of Lafayette, County of Contra Costa, State of California (the "Bruzzone Bollinger Property" or the "Property").

B. In July, 2002, the City Council of the City adopted a set of ordinances amending the regulations for development in hillside areas, including ordinances relating to the Low Density Residential (LR) Zoning District. Ordinance 529 established the LR-5 Zoning District, requiring a minimum lot area of five acres for development in the LR-5 zone. Ordinance 530 created the LR-10 zone by amending the then-existing LR District to require a minimum lot area of ten acres. In addition, the City Council through the passage of appropriate ordinances established a Hillside Residential Overlay District which affected the development potential of property located within the LR-10 Zoning District (the "LR-10/Hillside Rezoning"). All properties in the LR zone, including the Bruzzone Bollinger Property, were designated as LR-10, subject to the Hillside Overlay Zoning Restrictions.

C. In October, 2002, the City Council approved and adopted a general plan update (the "GPU") and approved a general plan environmental impact report (the "General Plan EIR"). Bruzzone protested against the LR-10/Hillside Rezoning and the approval of the General Plan EIR and the adoption of the GPU.

D. In August, 2002, Bruzzone commenced legal action against the City challenging the LR-10/Hillside Rezoning. In October, 2002, Bruzzone notified the City of its intent to commence litigation challenging the approval of the General Plan EIR and the adoption of the GPU. On or about October 31, 2002, the Parties entered into a tolling agreement (the "Tolling Agreement") pursuant to which Bruzzone agreed to forbear to file certain judicial challenges and Lafayette agreed that the time periods for all federal or state public entity claims, statutes of limitations, laches or other defenses based on the passage of time regarding the claims would be tolled. The Tolling Agreement has been extended several times by the parties, most recently to April 10, 2009. On July 17, 2007, Bruzzone filed a request for dismissal of the legal action with the Superior Court, thus dismissing their claims contained in that litigation against the City.

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E. In 2003, the City Council directed City Staff to proceed with a City-wide study to identify and reclassify certain rural residential designated properties from RR-10 to RR-5 in the General Plan.

F. Work was initiated by City Staff in early 2003 to explore the possible application of evaluation criteria to determine whether properties, including the Bruzzone Bollinger Property, qualified for reclassification to LR-5. Periodic reports were provided to the Planning Commission and the City Council over a period of two years and a series of field trips were conducted by City Staff in November, 2003 for the interested public, Planning Commission and Council members.

G. The City's review and analysis of the Evaluation Criteria concluded in 2005 and the City took action to reclassify a number of properties, including the Bruzzone Bollinger Property, to RR-5. This action was based on the findings of the study along with the conclusions of a thorough environmental analysis prepared in the form of an addendum to the certified General Plan EIR. As a part of the City's recommendations for reclassification of the Bruzzone Bollinger Property to RR-5 subject to a Development Agreement to be prepared and negotiated by the City and Bruzzone to assist in the establishment of master planning for the Property, City Staff reported that this Property classified for rezoning to the LR-5 District based on the Evaluation Criteria which had been developed and established to judge the merits of individual properties .

H. In September, 2005, Bruzzone and the City began specific discussions of a proposed Development Agreement, which discussions have continued with City Staff and a City Council subcommittee (Council Members Tatzin and Anderson). The proposed Development Agreement would provide certainty to Bruzzone as to the rules, regulations, policies, ordinances and General Plan provisions that would apply to planning and formulating a development project for the property and would provide public benefits to the City.

I. In March 2006, the City received a rezoning application (the "Rezoning Application") for the Bruzzone Bollinger Property which consisted of a rezone application on the City's general application form. In April 2006, the City deemed the application incomplete, stating additional information is necessary to complete the Rezoning Application. Bruzzone will submit this information in accordance with this Agreement.

J. The parties hereto by this Agreement, which is subject to ratification by the City Council and Bruzzone, desire to provide the framework and process by which Bruzzone shall complete their rezoning application and shall submit, and the City shall accept, a separate application for consideration of a Development Agreement in accordance with the basic parameters of a Development Agreement set forth below so that the parties may jointly proceed through the entitlement process to determine whether or not development of a residential development site on the Bruzzone Bollinger property can be approved in an environmentally sensitive and economically feasible manner.

NOW THEREFORE, in consideration of the above Recitals and for other good and valuable consideration, the receipt and adequacy of which is acknowledged, it is hereby agreed as follows:

AGREEMENT

1. Term.

The term of this Settlement Agreement shall commence upon the Effective Date and shall remain in effect until terminated, modified, or extended by circumstances set forth by this Settlement Agreement or by mutual consent of the Parties.

2. Submittal of Rezone and Development Agreement.

Petitioners agree to submit and the City agrees that it will accept for processing all such further documents, reports and fees as are necessary in order to allow the City to deem the Rezoning Application complete. In addition, Petitioners shall submit and the City shall accept for processing an application for a Development Agreement between the City and Petitioner related to the Property that contains certain terms as specified in greater detail in this Section 3 of this Agreement ("Development Agreement").

3. Development Agreement.

The Parties are interested in entering into a Development Agreement related to the Property that includes, but is not limited to the following:

A. Term. The term of the Development Agreement shall be fifteen (15) years.

B. Inclusionary Housing Ordinance. The City is in the process of developing and adopting an inclusionary housing ordinance to require new residential development to include on-site affordable housing or an in-lieu fee for the cost of such affordable housing ("Inclusionary Housing Ordinance"). Petitioners agree to comply with the City's Inclusionary Housing Ordinance, once adopted, and shall not challenge such Ordinance in court; provided, however, that Petitioners are free to fully take part in the legislative process leading to enactment of such ordinance, including seeking changes through the public hearing process. Petitioners agree to comply with any provision of the City's Inclusionary Housing Ordinance that is not found unenforceable by a court.

C. Enhancement Fees. In addition, to any other development impacts fees and other nexus based requirements that may be imposed on Petitioner as a condition to development of the Property, Developer shall pay an enhancement fee to the City based upon the number of residential parcels created. If 10 or fewer parcels are created, there shall be no enhancement fee. If 11-18 parcels are created the enhancement fee shall be Forty Thousand Dollars ($40,000) per parcel, which shall include the first ten parcels. If 19-26 parcels are created, the enhancement fee shall be Fifty Thousand Dollars ($50,000) per parcel, which shall include the first 18 parcels. If 27-32 parcels are created, the enhancement fee shall be Sixty Thousand Dollars ($60,000) per parcel, which shall include the first 26 parcels. Notwithstanding the term of the Development Agreement, this enhancement fee shall be paid at the issuance of each building permit for each parcel and shall be a continuing obligation of the Petitioner, and/or its heirs, successors and assigns, until paid in full. Each enhancement fee shall include an annual CPI adjustment based upon the Consumer Price Index, All Urban Consumers, San Francisco-Oakland-San Jose for the

previous calendar year, which shall automatically adjust on July 1 following the anniversary date of the effective date of the Development Agreement.

D. Vested Rights. The Development Agreement will provide that Bruzzone can go forward and design and seek entitlements for a project which would be subject to only the rules, regulations, ordinances, General Plan policies, provisions and other City regulations in force and effect on the effective date of the Development Agreement. The approved development would be subject only to those impact fees, charges, and exactions required by policies and ordinances in effect upon the effective date and the following:

(i) Such other policies, ordinances, rules and regulations as Bruzzone has been advised are in the process of being established pursuant to the provisions of the Government Code, including the Inclusionary Housing Ordinance, subject to increases as may be set out in said policies, ordinances, resolutions, rules, regulations, charges, exactions or fees;

(ii) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure;

(iii) Provided that they are uniformly applied to all development projects within the City, regulations governing engineering and construction standards and specifications, including uniform codes adopted by the City and local amendments to those codes adopted pursuant to state law. Such codes include, without limitation, the City's adopted version of the Uniform Administrative Code, Building Code, Plumbing Code, Mechanical Code, Electrical Code, and Fire Code; and

(iv) Regulations which may be in conflict with this Agreement, but which are mandated by another public agency and/or objectively required by the City (and there are no available reasonable alternatives) to protect the public health and safety in the event of a sudden, unexpected occurrence involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services within the immediate community. Such regulations must be a valid exercise of the City's police power.

4. Mutual General Release

In the event the City approves the Rezone and the Parties execute the Development Agreement, the Parties will release each other as follows:

A. Lafayette Release. Except as provided in this Settlement Agreement, Lafayette, and its officials, officers, Planning Commission, City Council, employees, agents, attorneys, representatives, assigns and successors-in-interest, hereby release and forever discharge Petitioners from any and all claims, causes of action, actions, damages, losses, demands, accounts, reckonings, rights, debts, liabilities, obligations, disputes, controversies, payments, costs and attorney's fees, of every kind and character, known or unknown, existing or contingent, latent or patent, arising from or related to the Hillside Ordinance, GPU, the General Plan EIR, and/or any alleged violations of Petitioners' constitutional rights related to the GPU ("Claims").

B. Petitioners. Except as otherwise provided in this Settlement Agreement, Petitioners and their respective officials, officers, employees, agents, attorneys, representatives,

assigns and successors-in-interest hereby release and forever discharge Lafayette and its officials, officers, Planning Commission, City Council, employees, agents, attorneys, representatives, assigns and successors-in-interest from any and all claims, causes of action, actions, damages, losses, demands, accounts, reckonings, rights, debts, liabilities, obligations, disputes, controversies, payments, costs and attorney's fees, of every kind and character, known or unknown, existing or contingent, latent or patent, arising from or related to the Claims.

5. Civil Code Release

The Parties acknowledge that they are familiar with the provisions of California Civil Code Section 1542, which provides as follows:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Parties acknowledge that they may have sustained damages, losses, costs or expenses that are presently unknown and unsuspected. Nevertheless, the Parties acknowledge that this Agreement has been negotiated and agreed upon in light of this situation, and hereby expressly waive any and all rights which they have under California Civil Code Section 1542 or any other statute or common law principal of similar effect.

6. Covenant by Parties not to Sue

Each party covenants and agrees that he, she or it shall not, directly or indirectly, bring, commence, initiate, institute, maintain or prosecute any action, suit or other proceeding of any kind or nature against a party to whom he or it has given a release, which is based, in whole or in part, on any claim or cause of action covered by the releases contained in this Agreement and that this Agreement may be pleaded as a full and complete defense and bar to, and may be used as the basis for an injunction against, any action, suit, or other proceeding, which may be commenced, initiated, instituted, prosecuted, maintained or otherwise threatened or attempted in breach or violation of this provisions of this Section. The provisions of this Section shall not apply to the b reach or threatened breach of any of the covenants, agreements, duties, obligations, representations, or warranties contained in this Agreement.

7. Attorneys' Fees

If enforcement of this Settlement Agreement is required, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs. The Parties may agree to engage in mediation of any dispute in advance of litigation, but no pre-litigation mediation shall be required and this provision shall not prevent any party from seeking injunctive relief.

8. No Admission

Nothing in this Settlement Agreement shall be deemed as an admission or denial as to the validity of any claims or defenses.

9. Entire Agreement

The Parties agree that this Settlement Agreement sets forth the final entire agreement between them and relating to the subject matter and that this document merges and supersedes all prior discussions, agreements, understandings, representations, and all other communications between them relating to the subject matter of this Settlement Agreement.

10. Warranty of Authority

Each Party represents and warrants that it has the right, power and authority to execute this Settlement Agreement. Each Party further represents and warrants that it has the exclusive right to prosecute and compromise the claims released by this Settlement Agreement and that it has neither made nor suffered to be made any sale, assignment, transfer, conveyance, pledge, hypothecation, or encumbrance of any kind whatsoever of any right, claim, demand, obligation, cost, expense, sanction, grievance, action, cause of action, controversy, debt, damage, arbitration, liability, duty, penalty, attorney fee, charge, suit, punitive damage, injury, loss, agreement, contract, promise, or lien released, canceled, rescinded or discharged hereby, and that it is the sole and absolute legal and equitable owner thereof, free and clear of any interest of any other person or entity. Each Party represents and warrants that it has given any and all notices, and obtained any and all consents, powers and authorities, necessary to permit it, and the persons executing this Settlement Agreement for it, to enter into this Settlement Agreement.

11. Written Waiver

A waiver of any Party's right to enforce any provision of this Settlement Agreement shall not be effective unless such a waiver is made expressly in writing. An express waiver of any one breach shall not be deemed a waiver of any other breach of the same or any other provision of this Settlement Agreement.

12. Legal Representation

The Parties affirm that they have been represented by counsel of their own choosing regarding the preparation and negotiation of this Settlement Agreement and the matters and claims set forth herein, and that each of them has read this Settlement Agreement and is fully aware of its contents and its legal effect. Neither Party is relying on any statement of the other Party outside the terms set forth in this Settlement Agreement as an inducement to enter into this Settlement Agreement and this Settlement Agreement is entered into voluntarily by both Parties.

13. Joint Preparation

The language of all parts of this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any party. No presumptions or rules of interpretation based upon the identity of the party preparing or drafting the Settlement Agreement, or any part thereof, shall be applicable or invoked.

14. Equal Dignity

This Settlement Agreement may not be altered, amended, modified or otherwise changed except in writing duly executed by an authorized representative of each of the Parties.

15. Binding on Assignees

This Settlement Agreement shall be binding on and inure to the benefit of the heirs, successors and assigns of the Parties to the Settlement Agreement.

16. California Law

This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of California.

17. Counterparts

This Settlement Agreement may be executed in counterparts, each of which will be deemed an original. This Settlement Agreement shall be binding upon the receipt of facsimile signatures.

18. Captions

Captions are included herein for ease of reference only. The captions are not intended to affect the meaning of the contents or scope of this Settlement Agreement.

19. Survival of Obligations

None of the releases contained in this Settlement Agreement is intended to release any Party from any obligation or understanding to be performed pursuant to this Settlement Agreement, all of which obligations and understandings shall survive the execution hereof.

IN WITNESS WHEREOF this Settlement Agreement is executed and agreed to by the following, as of the Effective Date.

CITY OF LAFAYETTE

By: _____

Name: _____

Mayor of City Council

_____

DAVID R. BRUZZONE

_____

JOAN E. BRUZZONE

RUSSELL J. BRUZZONE, INC., a
California corporation

By:_____
Its: _____

By:_____
Its: _____

BOLLINGER DEVELOPMENT, LLC, a
Nevada limited liability company

By:_____
Its: _____

By:_____
Its: _____

ESTATE OF RUSSELL J. BRUZZONE

By:_____
Executor

APPROVED AS TO FORM:

_____
City Attorney
City of Lafayette
Date: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF BOLLINGER PROPERTY

[Attached behind this page]